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SOL (MSHA) V. BILL PACK LAND
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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
PETITIONER

CIVIL PENALTY PROCEEDING

Docket No. WEVA 88-318
A. C. No. 46-07006-03503

v.

Whipple Refuse File

BILL PACK LAND CORPORATION,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. WEVA 88-355
A. C. No. 46-06415-03502

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
PETITIONER

PCR Surface

v.

PCR JOINT VENTURE,
RESPONDENT

DECISION

Appearances: Ronald Gurka, Office of the Solicitor, Arlington,
Virginia, for the Secretary;

Philip D. Mooney, Esq., Hamilton, Mooney, Burgess,
Young and Tissue, Oak Hill, West Virginia, for
Bill Pack Land Corporation,

P. Nathan Bowles, Esq., Bowles, McDavid, Graff and
Love, Charleston West Virginia, for PCR Joint
Venture.

Before: Judge Fauver

In these consolidated cases the Secretary seeks civil
penalties for alleged violations of safety standards under the
Federal Mine Safety Act of 1977, 30 U.S.C. 801 et seq.

The cases involve a coal mine refuse pile that has been on
fire for over 50 years.

The cases were called for hearing on February 13, 1990, at
Charleston, West Virginia. After testimony, and the introduction
and documentary evidence, the parties, with the presiding judge,
had an extensive settlement conference. This

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led to a settlement agreement that includes a reduced penalty for each Respondent, an agreed upon plan for extinguishing the fire, and an agreement to modify withdraw orders to permit Respondents to resume operations in accordance with the fire control and extinguishing plan.

I have considered the hearing evidence, and the documents submitted with the Secretary's motions to approve settlement, and conclude that they are consistent with the purposes of the Act.

ORDER

WHEREFORE IT IS ORDERED that:

1. The Secretary's motion to approve settlement in Docket No. WEVA 88-318 is GRANTED.

2. The Secretary's motion to approve settlement in Docket No. WEVA 88-355 is GRANTED.

3. Respondent Bill Pack Land Corporation shall comply fully with all the terms of the fire control and extinguishing plan attached to the Secretary's motion for settlement in Docket No. WEVA 88-318.

4. Respondent PCR Joint Venture shall comply fully with all the terms of the fire control and extinguishing plan attached to the Secretary's motion to approve settlement in Docket No. WEVA 88-355.

5. Subject to each Respondent's continued full compliance with such fire control and extinguishing plans, the Secretary may modify Withdrawal Order Nos. 2574254 and 2574256 to permit the Respondents, respectively, to resume operations in compliance with such plans.

6. Citation No. 2715802 and Order No. 2754254 are AFFIRMED.

7. Respondent Bill Pack Land Corporation shall pay the approved penalty of \$350 within 30 days of this Decision.

8. Citation No. 2715803 and Order No. 2574256 are AFFIRMED.

9. Respondent PCR Joint Venture shall pay the approved penalty of \$350 within 30 days of this Decision.

William Fauver
Administrative Law Judge